

EX PARTE OR LATE FILED

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RECEIVED

FEB 15 1996

STEPHEN DIAZ GAVIN

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

February 15, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

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Re: Ex Parte Presentation - ET Docket 95-183 and PP Docket No. 95-183 ⁹³⁻²⁵³ ✓

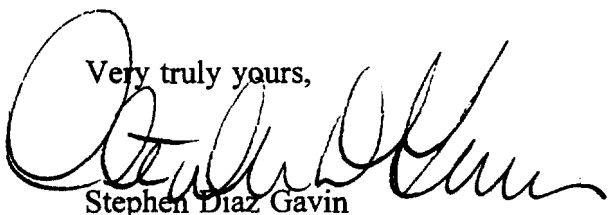
Dear Mr. Caton:

Pursuant to Section 1.206(2) of the Commission's Rules, I hereby provide notice that today, February 15, 1996, the law firm of Besozzi, Gavin, Craven & Schmitz hand served a letter relating to ET Docket No. 95-183 and PP Docket No. 95-183. The letter was served on each Commissioner, their respective staff members and certain other agency personnel handling the 39 GHz application freeze matter.

For the information of any reader of this notice, I have attached copy of the referenced letter and attachment.

If you have any questions about this matter, please call myself or Paul C. Besozzi at (202) 293-7405.

Very truly yours,



Stephen Diaz Gavin

Attachment
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STEPHEN DIAZ GAVIN

February 15, 1996

HAND DELIVERED

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 "M" Street, N.W. Room 814 Stop Code 0101
Washington, D.C. 20554

Re: **ET Docket No. 95-183**
PP Docket No. 93-253

Dear Chairman Hundt:

On December 15, 1995, the Commission adopted a *Notice of Proposed Rulemaking and Order*, FCC 95-500, regarding the filing, processing and proposal to grant by competitive bidding applications for 39 GHz band of frequencies. In doing so, the Commission also determined to freeze, pending the adoption of competitive bidding selection rules, the processing of certain 39 GHz applications that are not mutually exclusive.

We wish to bring to your attention and that of the other Commissioners and their staffs the attached letter from Senator Larry Pressler and Senator Thomas Daschle regarding this matter.

Very truly yours,


Stephen Diaz Gavin

Attachment

cc: The Honorable James H. Quello
The Honorable Andrew C. Barrett
The Honorable Rachelle B. Chong
The Honorable Susan Ness
Blair Levin, Esquire
Ruth Milkman, Esquire
Lauren J. Belvin, Esquire
Rudolfo M. Baca, Esquire
Lisa B. Smith, Esquire
Brian Carter, Esquire
Todd Silbergeld, Esquire
Jane Mago, Esquire
Susan Toller, Esquire
David R. Siddall, Esquire

The Honorable Reed E. Hundt
February 15, 1996
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Mary P. McManus, Esquire
Michele Farquhar, Esquire
Mr. Ralph Haller
Robert H. McNamara, Esquire
Michael Hamra, Esquire
Jacqueline Chorny, Esquire
Dan Phythyon, Esquire

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United States Senate

WASHINGTON, D.C. 20510

February 9, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Hundt:

We continue to support your efforts and those of the entire Federal Communications Commission ("Commission" or "FCC") to carry out the intent of Congress that the Commission grant mutually exclusive applications for authorizations in certain radio services on the basis of competitive bidding, as authorized by the Omnibus Budget Reconciliation Act of 1993 ("1993 Budget Act" or "'93 Act").

In granting authority to the FCC to award such authorizations by auction, Congress expressly limited that authority to situations involving mutually exclusive applications. Moreover, Section 117 of the 1993 Budget Act, now codified at 47 U.S.C., section 309(j)(6)(E), directed the Commission to make every effort to avoid mutually exclusive application situations by use, among other things, of engineering solutions such as frequency coordination and amendments to eliminate mutually exclusive situations. The opportunity to generate revenues was not to be used as justification for ignoring this direction.

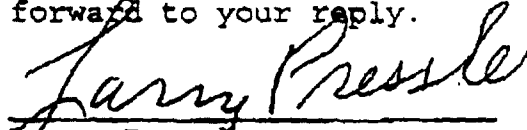
While some segments of the industry have expressed concern about Commission action regarding allocation of specific portions of the electromagnetic spectrum, our concern is with the larger issue of Commission implementation of Congressionally-imposed responsibilities under the '93 Act. We are particularly interested in the Commission's treatment of its auction authority under the Notice of Proposed Rulemaking and Order, FCC 95-500, (the "Order") covering the proposed revision of rules governing processing of 39 GHz applications.

We wholly support spectrum auctions, where reasonable, appropriate and truly representative of Congressional intent. By virtue of either completing the application process or amending already submitted applications to eliminate mutual exclusivity concerns, applicants have in essence established a fairly reasonable expectation that they would not be subjected to the competitive bidding process. In considering the public interest

to generate revenues under the '93 Act, Congress determined that the promotion of more competitive services for the public and more efficient use of spectrum were of paramount importance when compared to allocation by competitive bidding.

It therefore seems anomalous to the clearly expressed intent of Congress within the Act that applicants who have completed the application process would subsequently be exposed to having to compete for that spectrum in auctions. Clarification of the Commission's reasoning and interpretation of its auction authority under the 1993 Budget Act would be appreciated.

Thank you for your prompt attention in this matter. We look forward to your reply.


Larry Pressler


Thomas Paschle